

JEFFER, MANGELS, BUTLER & MARMARO LLP  
MARTIN H. ORLICK (Bar No. 083908), MHO@jmbm.com  
MATTHEW S. KENEFICK (Bar No. 227298), MSK@jmbm.com  
Two Embarcadero Center, Fifth Floor  
San Francisco, California 94111-3824  
Telephone: (415) 398-8080  
Facsimile: (415) 398-5584

Attorneys for Defendants CITY AND COUNTY OF SAN  
FRANCISCO and CITY OF SAN FRANCISCO UPTOWN  
PARKING CORPORATION

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

CRAIG YATES,

Plaintiff,

v.

UNION SQUARE; CITY AND COUNTY OF  
SAN FRANCISCO, CITY OF SAN  
FRANCISCO UPTOWN PARKING  
CORPORATION; EMPORIO RULLI IL  
CAFFE UNION SQ.; EMPORIO RULLI IL  
CAFFE UNION SQ., INC.; and DOES 1  
through 50, Inclusive,

Defendants.

CASE NO. C074087 JSW

**NOTICE OF MOTION; MOTION FOR THE  
COURT TO DECLINE SUPPLEMENTAL  
JURISDICTION OVER AND TO DISMISS  
PLAINTIFF'S STATE LAW CLAIMS [28  
U.S.C. § 1367(c)] AND TO STRIKE  
PLAINTIFF'S UNSUPPORTED AND  
IMPROPER DAMAGE PRAYERS FROM  
THE COMPLAINT [FRCP 12(f)]**

**Accompanying Papers:** Memorandum of Points  
and Authorities; Request for Judicial Notice;  
(Proposed) Order

Date: January 18, 2008  
Time: 9:00 a.m.  
Dept: Crtrm. 17  
Judge: The Hon. Jeffrey S. White

Complaint filed: August 9, 2007  
Trial date: none set

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE:** that on January 18, 2008, at 9:00 a.m., before the  
Honorable Jeffrey S. White in Court Room 17 of the above-referenced court located at 450 Golden  
Gate Ave., 16th Floor, San Francisco, California, Defendants City and County of San Francisco  
("CCSF") and City of San Francisco Uptown Parking Corporation ("Uptown") (collectively,

"Moving Parties") will, and hereby do, make a motion to this Court for the Court to Decline Supplemental Jurisdiction Over and to Dismiss Plaintiff's State Law Claims [28 U.S.C. § 1367(c)] and to Strike Plaintiff's Unsupported and Improper Damage Prayers from the Complaint [FRCP 12(f)] (the "Motion").

By this Motion, Moving Parties request the Court, because of irreconcilable interpretations between the California state and federal courts of the requirements for entitlement to statutory damages under the California Unruh Civil Rights Act, decline to extend supplemental jurisdiction over Plaintiff's state law claims and dismiss the same. 28 U.S.C. § 1367(c).

Pursuant to Federal Rule of Civil Procedure, 12(f), Moving Parties also request the Court strike out the following portions of the Complaint as un-supported and improper damage prayers:

**Requests For Damages Under Title II Of The ADA:**

As a result of such discrimination, in violation of section 202 of the ADA, plaintiff is entitled to the remedies, procedures and rights set forth in section 505 of the Rehabilitation Act of 1973 (29 U.S.C. §794a), as provided by section 203 of the ADA, including injunctive relief and damages for violation of his civil rights, as previously plead.

Complaint ¶ 24 p.11 line 27 through p.12 line 4.

Plaintiff requests appropriate damages for each of his complained experiences for the two year period preceding the filing of this complaint, as well as litigation expenses and costs, and reasonable attorneys' fees as provided by law.

Complaint ¶ 26, p.12 lines 10-14.

Award damages against the government entity defendants pursuant to Title II of the Americans with Disabilities Act.

Complaint, Prayer for Relief, p.39 lines 15-17.

**Requests For Damages Under Section 504 Of The Rehabilitation Act:**

Plaintiff seeks damages for the ongoing and continuous denial of his Civil Rights from the date of his initial attempts to use the square, or the dates he was deterred (preceding back to two years before the filing of the original complaint) to the time of trial or remediation, and for physical, mental and emotional injury, all to his damages according to proof.

Complaint ¶ 32, p.14 lines 21-27

JMBM  
Jeffer Mangels  
Butler & Marmaro LLP

Award damages against all defendants pursuant to section 504 of the Rehabilitation Act.

Complaint, Prayer for Relief, p.39 lines 13-14.

**Requests For Attorneys' Fees And Litigation Costs Under California Code Of Civil Procedure Section 1021.5:**

...justifying "public interest" attorneys' fees pursuant to the provisions of California Code of Civil Procedure Section 1021.5.

Complaint ¶ 47, p.22 lines 9-10.

Plaintiff further request that the court award statutory attorneys' fees, litigation expenses and costs to plaintiff pursuant to section 19953 Health & Safety Code, Civil Code section 55, and Code of Civil Procedure section 1021.5, all hereinafter prayed for.

Complaint ¶ 61, p.27 lines 1-5.

...justifying "public interest" attorneys' fees pursuant to the provisions of California Code of Civil Procedure Section 1021.5.

Complaint ¶ 76, p.32 lines 26-28.

...plaintiff seeks attorneys' fees pursuant to section 1021.5 California Code of Civil Procedure...

Complaint ¶ 80, p.34 lines 6-7.

...justifying "public interest" attorneys' fees pursuant to the provisions of California Code of Civil Procedure Section 1021.5.

Complaint ¶ 84, p.35 lines 15-17.

...plaintiff seeks attorneys' fees pursuant to section 1021.5 California Code of Civil Procedure...

Complaint ¶ 89, p.36 lines 19-20.

Award all costs of this proceeding and all reasonable attorneys' fees, litigation expenses and costs as provided by law, including but not limited to those recoverable pursuant to the provisions of section 54.3 and 55 Civil Code, section 1021.5 Code of Civil Procedure...

Complaint Prayer for Relief, p.39 lines 20-24.

This Motion is based upon this notice and motion, the accompanying Memorandum of Points and Authorities in Support of Motion for the Court to Decline Supplemental Jurisdiction Over and to Dismiss Plaintiff's State Law Claims [28 U.S.C. § 1367(c)] and to Strike Plaintiff's Unsupported and Improper Damage Prayers from the Complaint [FRCP 12(f)] filed and served

1 concurrently herewith, the accompanying Request for Judicial Notice in Support of Motion for the  
2 Court to Decline Supplemental Jurisdiction Over and to Dismiss Plaintiff's State Law Claims [28  
3 U.S.C. § 1367(c)] and to Strike Plaintiff's Unsupported and Improper Damage Prayers from the  
4 Complaint [FRCP 12(f)] filed and served concurrently herewith, as well as the complete files and  
5 records of this action and on such other and further evidence, arguments, and authorities as may be  
6 submitted prior to and during the hearing on this Motion.

7 DATED: December 12, 2007

JEFFER, MANGELS, BUTLER & MARMARO LLP  
MARTIN H. ORLICK  
MATTHEW S. KENEFICK

9  
10 By: /S/ Martin H. Orlick

MARTIN H. ORLICK  
Attorneys for Defendant CITY AND COUNTY OF  
SAN FRANCISCO AND CITY OF SAN  
FRANCISCO UPTOWN PARKING CORPORATION

JMBM | Jeffer Mangels  
Butler & Marmaro LLP